



## AGENDA BILL APPROVAL FORM

<b>Agenda Subject:</b> Moratorium		<b>Date:</b> December 9, 2008
<b>Department:</b> Public Works	<b>Attachments:</b> Resolution No. 4433	<b>Budget Impact:</b>
<b>Administrative Recommendation:</b>  City Council adopt Resolution No. 4433.		
<b>Background Summary:</b>  <p>Resolution No. 4300, adopted January 22, 2008, and amended by Resolution No. 4321 on March 3, 2008, established an initial six-month moratorium on the filing of land use applications, building and grading permit applications in the drainage area contributing surface flows to Mill Creek tributaries 0045, 0047, 0048 and 0053 as identified by King County and as defined by Resolution Nos. 4300 and 4321 and which moratorium was extended for an additional six-month period by Resolution No. 4383 on July 21, 2008. The moratorium is due to expire on December 31, 2008.</p> <p>A hearing is required on the proposed extension of the moratorium, which was held earlier this evening.</p>          <p>W1215-10 O3.4.2.1.2</p>		
<b>Reviewed by Council &amp; Committees:</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Arts Commission  <input type="checkbox"/> Airport  <input type="checkbox"/> Hearing Examiner  <input type="checkbox"/> Human Services  <input type="checkbox"/> Park Board  <input type="checkbox"/> Planning Comm.         </div> <div style="width: 45%;"> <b>COUNCIL COMMITTEES:</b>  <input type="checkbox"/> Finance  <input type="checkbox"/> Municipal Serv.  <input type="checkbox"/> Planning &amp; CD  <input type="checkbox"/> Public Works  <input type="checkbox"/> Other _____         </div> </div>		<b>Reviewed by Departments &amp; Divisions:</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Building  <input type="checkbox"/> Cemetery  <input type="checkbox"/> Finance  <input type="checkbox"/> Fire  <input type="checkbox"/> Legal  <input type="checkbox"/> Public Works  <input type="checkbox"/> Information Services         </div> <div style="width: 45%;"> <input type="checkbox"/> M&amp;O  <input type="checkbox"/> Mayor  <input type="checkbox"/> Parks  <input type="checkbox"/> Planning  <input type="checkbox"/> Police  <input type="checkbox"/> Human Resources         </div> </div>
<b>Action:</b> Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No      Call for Public Hearing ____/____/____ Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____		
<b>Councilmember:</b> Wagner		<b>Staff:</b> Dowdy
<b>Meeting Date:</b> December 15, 2008		<b>Item Number:</b> VIII.B.9

### **RESOLUTION NO. 4 4 3 3**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, RENEWING THE MORATORIUM ESTABLISHED BY RESOLUTION NO. 4300, AS AMENDED BY RESOLUTION NO. 4321 AND EXTENDED BY RESOLUTION NO. 4383, ON THE FILING OF CERTAIN LAND USE, BUILDING AND GRADING PERMIT APPLICATIONS IN THE DRAINAGE AREA CONTRIBUTING SURFACE FLOWS TO MILL CREEK TRIBUTARIES 0045, 0047, 0048 AND 0053 AS IDENTIFIED BY KING COUNTY AND AS DEFINED HEREIN, TO BE EFFECTIVE FOR A PERIOD ENDING JUNE 30, 2009

WHEREAS, the City of Auburn and King County previously entered into an Interlocal agreement relating to the annexation of the West Hill Potential Annexation Area, as approved by City of Auburn Resolution No. 4113; and

WHEREAS, King County's Water and Land Resources Division has completed a detailed analysis known as the "Mullen Slough Capital Improvement Project Study and Action Plan (2002)," identifying chronic flooding within the drainage basin, due to a lack of conveyance capacity caused by increased runoff from development and aggradation of sediments in the valley floor channels; and

WHEREAS, although several projects have been identified within the Mullen Slough Capital Improvement Project Study and Action Plan in order to alleviate chronic flooding within the drainage basin, implementation of these Capital Improvement projects by King County, the entity with jurisdiction and control over the area up through the date of annexation, has not occurred; and

WHEREAS, pursuant to its Findings of Fact set forth in Resolution No. 4300, the City Council established a moratorium on the applications for building permits that would result in increased impervious surfaces, for grading permits or for land use

approvals shall be accepted in the area as defined therein during the effective period of this moratorium; and

WHEREAS, pursuant to RCW 35A.63.220, the City Council held a public hearing on this moratorium on Tuesday, February 19, 2008, at the City of Auburn City Council Chambers, at which public hearing persons wishing to speak to the moratorium were afforded the opportunity to do so; and

WHEREAS, in light of the testimony and information provided at said public hearing, the City Council modified the moratorium by means of City of Auburn Resolution 4321, removing certain properties and classes of development from the moratorium; and

WHEREAS, the City Council held a public hearing on extending the moratorium on July 21, 2008, and after considering the testimony and information presented at that hearing, adopted Resolution 4383 extending the moratorium until December 31, 2008; and

WHEREAS, King County and City of Auburn staffs have met to discuss the issues and potential remedies surrounding the historic and on-going flooding and drainage problems within the draining basis, have reviewed and continue to evaluate the 2002 King County Mullen Slough Capital Improvement Project Study and Action Plan, and to explore options to deal with the extensive, complex and expensive long-term remedies for the flooding and drainage problems, for which there is no easy or quick solution; and

WHEREAS, during the extension period of the moratorium, the City received a letter dated October 21, 2008 from the Federal Emergency Management Agency ("FEMA"). That letter stated that the National Marine Fisheries Service ("NMFS") was requiring FEMA to modify implementation of the National Flood Insurance Program in

such a manner to address NMFS' requirements for mitigating potential "takes" of endangered species as those requirements relate to development in floodplains; and

WHEREAS, in order to ensure that development that does occur within floodplains within the City of Auburn respond in a way that meets the requirements of FEMA and NMFS, the City adopted Resolution 4416 on November 17, 2008, placing a moratorium on the filing, receipt, and approval of applications for development within areas of the City located within, in whole or in part, identified 100-year floodplains as depicted in the most currently approved floodplain maps as published by FEMA unless the applicants can establish to the City's satisfaction that they are able to meet the requirements of FEMA and NMFS in developing their property in a way that adequately protects the endangered species and that meets the FEMA and NMFS concerns for floodplain development; and

WHEREAS, a developer has come forward and secured development rights over the majority of the properties that the original moratorium was established to protect from upstream impacts. Through a meeting with City and King County staff the developer has determined that he may be able to resolve many of the historic drainage issues by combining the individual properties into a common development to allow him to have sufficient property to mitigate the foreseeable flooding and wetland impacts of the development, and

WHEREAS, the State Growth Management Act, Chapter 36.70A RCW and its goals and policies mandate proper planning and consideration of, and the need to thoughtfully implement, storm water systems and programs and capital improvements to address flooding and storm water problems and protection of downstream properties, and such policies and goals further support the need for continuation of the moratorium in Resolution 4300 as amended by Resolution 4321 and extended by Resolution 4383; and

WHEREAS, RCW 35.63.200, RCW 35A.63.220 and RCW 36.70A.390 specifically authorize adoption, amendment and extension of a moratorium to allow for thoughtful and proper land use and utility planning, and to involve the public in decision-making; and

WHEREAS, in addition to RCW 35.63.200, 35A.63.220 and 36.70A.390, the State Constitution, Art. XI, §11, as well as the broad and expansive police powers granted to cities like Auburn, and various court decision such as *Weden v. San Juan County*, 135 Wn. 2d 678 (1998), *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641 (1995) and *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002) also authorize adoption of moratoria to allow for thoughtful and proper land use planning with full public input; and

WHEREAS, even though the developer believes that he can resolve the historic drainage issues on the affected properties, the FEMA/NMFS requirements will require the developer to not only resolve drainage, but to do so in a manner that mitigates any potential "take" of endangered species. Until FEMA/NMFS provides guidance, additional time is required to develop the set of capital improvements required to provide drainage to the affected properties for adoption by the City and the County so that requirements of new development within the drainage basin are understood and long-term solutions can be funded and implemented; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, HEREBY RESOLVES AS FOLLOWS:

**Section 1. Findings of Fact.**

1. That the City Council re-adopts and incorporates herein by reference the findings of fact set forth in Resolution 4300, Resolution 4321, and Resolution 4383. The City Council also adopts the recital clauses of this Resolution as additional findings of

fact to support this Resolution and the continuation of the moratorium established by Resolution No. 4300, as amended by Resolution No 4321 and extended by Resolution 4383.

2. That the City Council finds that the protection of the public health, safety, welfare and fiscal integrity of the City of Auburn requires extension of the moratorium established in Resolution 4300, as amended by Resolution 4321 and extended by Resolution 4383.

**Section 2. Moratorium Extended.** The moratorium established by Resolution No. 4300, as amended by Resolution No 4321 and previously extended by Resolution 4383, shall remain in effect for a period expiring June 30, 2009, unless extended by further action of the City Council; Provided that this Moratorium shall automatically expire upon the effective date of an Ordinance or other legislative enactment that gives the City the resources to regulate the land use in the Drainage Area Contributing Surface Flows to Mill Creek Tributaries 0045, 0047, 0048 and 0053, as Identified by King County and as defined herein, so that the City will be able to implement recommendations offered within the Mullen Slough Capital Improvement Project Study and Action Plan.

**Section 3. Severability.** Should any section, paragraph, sentence, clause or phrase of this Resolution, or its application to any person or circumstance, be declared unconstitutional or invalid for any reason, or should any portion of this Resolution be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Resolution or its application to other persons or circumstances.

**Section 4. Implementation.** The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

**Section 6. Effective Date.** This Resolution shall take effect and be in full force upon adoption.

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Peter B. Lewis, Mayor

Attest

\_\_\_\_\_  
Danielle Daskam, City Clerk

Approved as to Form:

  
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Daniel B. Heid, City Attorney